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No. 86-484

In the Supreme Court of the United States

October Term, 1986

WESTMAN COMMISSION COMPANY,
Petitioner,

vs.

HOBART INTERNATIONAL, INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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PETITIONER'S QUESTIONS RESTATED

Whether this Court should review the opinion of the United States Court of Appeals for the Tenth Circuit that there is no violation of the Sherman Act when a potential dealer is denied a distributorship by a manufacturer at the behest of a single existing distributor where, as the Court of Appeals found:

1. Nothing in the record demonstrated that the manufacturer possessed market power;

2. The District Court's findings compelled the conclusion that interbrand competition was vigorous;

3. The District Court's findings compelled the conclusion that the market for the manufacturer's products was highly competitive following the distributorship denial;

4. Only a single manufacturer and a single dealer participated in the denial;

5. The record reveals not the slightest hint of price maintenance or price fixing; and

6. There was no allegation of any tying arrangement.

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RESPONDENT'S BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

A. The Facts

Petitioner Westman Commission Company ("Westman"), a Denver-based distributor of institutional food service products, asserted as the basis of this Sherman Act Section 1 (15 U.S.C. 1) action that in July, 1974 and January, 1976, Respondent Hobart International, Inc. ("Hobart"), a manufacturer of kitchen equipment products, refused to extend it a formal distributorship agreement at the behest of one of Westman's competitors, Nobel, Inc. ("Nobel").

It is undisputed that thereafter Westman not only had access to Hobart's kitchen equipment products but that Westman sold Hobart's products and the products of 52

other lines of food service equipment directly in competition with Nobel. Westman had access to Hobart products from another Hobart dealer, Buller Fixture Company ("Buller") and resold those Hobart products in competition with Nobel. J. App. Vol. III, 845; Vol. IV, 1184-85; J. Bk. Ex. Vol. I, 306-313.[1] Furthermore, Westman conceded in its brief to the Court of Appeals that following the denial of the distributorship it competed with Nobel "in the sale of a broad spectrum of kitchen equipment and supplies." Pet. App. 7a-8a.[2]

Westman's sales of Hobart products as a percentage of Westman's total equipment sales did not vary because Westman purchased Hobart products from Buller rather than directly from Hobart. In 1974, prior to the distributorship denial, Westman's Hobart sales totaled $17,161.82, or 1.2% of its total equipment sales. J. Bk. Ex. Vol. I, 306-313. In 1979, subsequent to the denial, Westman's purchases of the Hobart line of products, all from Buller, totaled $74,661.60, again, approximately 1.2% of its total equipment sales. *Id.*

From 1974 to 1979, Westman's kitchen equipment sales increased some 450%. J. Bk. Ex. Vol. I, 314-317. During the 1974-1979 period, Westman jumped from the 46th to the 20th largest institutional food service distributor in the nation; and from 1978 to 1979, its sales showed the "greatest increase, in terms of dollars and percentage

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1. Citations to the Record will be to J. App. Vol. ....., and J. Bk. Ex. Vol. ....., referring to the Joint Appendix and Joint Book of Exhibits, respectively, containing the entire Record in the District Court and filed jointly by the parties with the Court of Appeals.

2. Citations to the Court of Appeals' opinion will be to Petitioner's Appendix as "Pet. App. ....." Citation to the District Court's opinions and order will be to Petitioner's Supplemental Appendix as "Pet. Supp. App. ....."

achieved by a single-location distributor" in the entire nation. J. Bk. Ex. Vol. I, 375. Such is the success story which here casts itself in the role of victim.

Westman's contention below was that because of "price differences" in connection with its purchases of Hobart products from Buller instead of directly from Hobart, Westman was prevented from adopting a "one-stop distribution" method of competing with Nobel and was therefore completely excluded from what it referred to as a "one-stop shopping market"—a "market" in which Westman was the only potential competitor to Nobel.

This argument, the *sine qua non* of both of Westman's *per se* and rule of reason theories of liability below, was fully accepted by the District Court in its initial opinion following a bifurcated trial on liability. Pet. Supp. App. 2.

Following a second trial on damages, the District Court awarded Westman a judgment totaling $3,534,339.05, after trebling and including attorney fees.[3] Pet. Supp. App. 63. In its opinion on damages, the District Court directly contradicted its earlier opinion on liability and found that Westman was *not* completely excluded from the "one-stop shopping" market but, instead, had captured a 16.6%

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3. The District Court's opinion awarding damages held that because Westman was not a Hobart dealer, it was not eligible to receive a factory rebate on its purchases of Hobart equipment. Pet. Supp. App. 37. The District Court reasoned that the unavailability of this rebate, referred to as a "price difference" by the District Court (Pet. Supp. App. 26, 40, n.8), caused Westman to lose certain Hobart sales, which in turn caused the loss of sales of related equipment, which in turn caused an additional loss of "follow-on" business. The District Court found the grand total of lost sales to be $11,622,635. Pet. Supp. App. 43-52. This conclusion was made in the face of a Magistrate's ruling, affirmed by the District Court in its damage opinion, that Westman lost no jobs or sales because it was denied a Hobart dealership. Pet. Supp. App. 38-9, n.8.

share of what the District Court referred to as the "Westman-Nobel" market. Pet. Supp. App. 44.[4]

B. The Court of Appeals' Opinion

In a unanimous opinion, the Court of Appeals reversed and ordered judgment entered in favor of Hobart. The Court of Appeals concluded, in part, that:

1. The District Court's findings as to the existence of a "one-stop shopping" or "Westman-Nobel" market were clearly erroneous, Pet. App. 6a-9a;

2. Although the District Court did not address the issue, nothing in the record demonstrated that Hobart possessed market power, Pet. App. 18a-20a, 27a;

3. The District Court's findings compelled the conclusion that there was no evidence that restaurant equipment produced by other manufacturers was not reasonably interchangeable with Hobart products and that "on an interbrand basis, the restaurant equipment supply market in the Denver area is highly competitive," Pet. App. 8a, 27a;

4. The District Court's findings, and concessions made in Westman's Brief to the Court of Appeals, compelled the conclusion that the market for Hobart

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4. The District Court's opinion on damages concluded that Westman was only "partially" excluded from the "one-stop shopping" market. Pet. Supp. App. 39-40, 43-45. However, the asserted basis of this finding was the same basis the Court had previously used to hold that Westman was "completely" excluded from that market—the absence of factory rebates Westman would have received if it had been a Hobart dealer. Pet. Supp. App. 37. However, Westman's president admitted that at most these lost rebates could have amounted to $2,500 per year. J. App. Vol. III, 832-33. Thus, to justify the District Court's damage opinion, one must assume that over the five-and-a-half year damage period, a loss of $13,750 in rebates resulted in lost sales of $11,622,365 even though Westman was not "completely excluded" from the market.

kitchen equipment products was "highly competitive" subsequent to the denial, Pet. App. 7a;

5. There were no allegations that anyone other than Nobel and Hobart participated in the denial of the distributorship, Pet. App. 4a;

6. There were no allegations that the denial of the distributorship was part of any attempt to fix or stabilize prices. Pet. App. 4a.

After rejecting the District Court's application of a *per se* rule, and its faulty analysis under the rule of reason, the Court of Appeals found no need for a remand since the record demonstrated a complete failure by Westman to meet its burden of proof of showing the adverse effect on competition required to constitute a rule of reason violation. Pet. App. 26a-27a.

SUMMARY OF ARGUMENT

The Court of Appeals' opinion thoroughly analyzed the District Court's findings and the record to ascertain whether there were any effects upon either interbrand or intrabrand competition resulting from the denial of the distributorship and found none. The questions raised in the Petition reflect nothing more than Westman's disagreement with the Court of Appeals' analysis of the District Court's findings and the record. Each question presented by Petitioner would require this Court to second-guess that well-reasoned analysis, a process in which this Court has traditionally declined to engage.

The opinion of the Court of Appeals is in complete harmony with recent decisions of this Court limiting the use

of the *per se* rule in the context of dealer terminations. Consistent with this Court's holdings in *F.T.C. v. Indiana Federation of Dentists,* 106 S. Ct. 2009 (1986), *Northwest Wholesale Stationers v. Pacific Stationery,* 105 S. Ct. 2613 (1985), and *Monsanto Co. v. Spray-Rite Service Corp.,* 465 U.S. 752 (1984), the Tenth Circuit declined to apply a rule of *per se* illegality to a manufacturer's termination of a dealer, where there was no evidence of market power, resale price maintenance or a classic "group boycott." Applying the rule of reason, the Court of Appeals found no evidence of injury to competition in a properly defined market and thus correctly ordered judgment to be entered in favor of Hobart.

The purported "conflict" among the Circuits alleged by Westman does not exist. The opinion of the Court of Appeals is consistent not only with the recent decisions of this Court, but also with the holdings of every Court of Appeals' opinion decided on similar facts rendered since *Continental T.V., Inc. v. GTE Sylvania,* 433 U.S. 36 (1977).

REASONS FOR DENYING THE WRIT

I. THE QUESTIONS RAISED BY THE PETITION TURN ON THE FACTS OF THIS CASE AND ARE OF NO NATIONAL SIGNIFICANCE

All three questions presented in the Petition are premised upon the conclusion in the District Court's original opinion on liability, but contradicted in the District Court's second opinion on damages, that "Westman was completely excluded from the one-stop shopping market." Pet. 4-5. Thus, the Petition contends (1) that the "horizontal effect" of Westman's market exclusion receives "different treatment in other circuits" (Pet. 5-8); (2) that because of the Court of Appeals' creation of "irrebuttable presumptions" of "*per se* legality," the "horizontal impact" of Westman's exclusion from "effective competition in general with Nobel" was not considered (Pet. 9-11); and (3) that the Court of Appeals' opinion "ignores the legal context of this case—Westman was excluded from the one-stop shopping market when the indispensable Hobart line was cut off." Pet. 19.

The Court of Appeals rejected the District Court's factual finding of a "one-stop shopping" market as "clearly erroneous." Pet. App. 9a. The Court of Appeals also concluded, based upon the District Court's findings in both of its opinions, that "the market for Hobart products was highly competitive." Pet. App. 7a. The factual predicate for the entire Petition was thus expressly rejected by the Court of Appeals.

Consequently, the only real questions raised in the Petition depend upon Westman's perception of the par-

ticular facts of this case. At most, Petitioner asks this Court to review the record to find whether the Court of Appeals properly analyzed the evidence in reversing the opinion of the District Court. This Court does not grant certiorari to determine whether it agrees or disagrees with conclusions by appellate courts reversing findings of fact as clearly erroneous. *F.T.C. v. Standard Oil Co.*, 355 U.S. 396, 400-1 (1958) (citing *F.T.C. v. American Tobacco Co.*, 274 U.S. 543, 544 (1927)).

II. THIS COURT'S OWN PRIOR DECISIONS ARE CONTROLLING

This Court has repeatedly emphasized the fundamental antitrust tenet that *per se* rules will only be applied when experience and economic analysis make clear that the conduct under review is so harmful to the competitive process and so lacking in redeeming virtue that it should be categorically prohibited. *NCAA v. Board of Regents of University of Oklahoma*, 468 U.S. 85, 100-104 (1984); *Broadcast Music, Inc. v. CBS*, 441 U.S. 1, 19-20 (1979). This basic tenet is applied whether the conduct at issue is horizontal or vertical. *See*, e.g., *Northwest Wholesale Stationers, Inc. v. Pacific Stationery and Printing Co.*, 105 S. Ct. 2613, 2619-21 (1985); *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 49-59 (1977).

Three recent cases decided by this Court have applied this fundamental principle to limit the application of a *per se* rule in the context of group boycotts and dealer terminations. In *F.T.C. v. Indiana Federation of Dentists*, 106 S. Ct. 2009 (1986) and *Northwest Wholesale Stationers v. Pacific Stationery*, 105 S. Ct. 2613 (1985), this Court refused to utilize the group boycott "pigeon-hole" to find a

per se violation unless the evidence showed that the defendants possessed market power or exclusive access to an element essential to effective competition so that it could be clearly concluded that the defendants' actions would result in predominantly anticompetitive effects. *Indiana,* 106 S. Ct. 2018; *Northwest,* 105 S. Ct. at 2621. In *Monsanto Co. v. Spray-Rite Service Corp.,* 465 U.S. 752 (1984), this Court articulated the circumstances under which *per se* rules will be applied in cases involving dealer terminations:

> The . . . distinction in distributor-termination cases is that between concerted action to set prices and concerted action on non-price restrictions. The former have been *per se* illegal since the early years of national antitrust enforcement. (citation omitted). The latter are judged under the rule of reason . . . . 465 U.S. at 761.

In this dealer-termination case, the Court of Appeals held that a *per se* rule was not justified because (1) there was "not the slightest hint of any price maintenance or price fixing" (Pet. App. 16a); and (2) no evidence existed to suggest any group boycott. Pet. App. 14a-15a, n.1. Moreover, the Court of Appeals expressly found that "nothing in the record demonstrates that Hobart had market power" (Pet. App. 27a) and that after the denial of the distributorship, the District Court's findings compelled the conclusion that both interbrand competition for restaurant equipment and supplies and the intrabrand market for Hobart products were "highly competitive." Pet. App. 7a-8a; 27a.

The Court of Appeals' refusal to utilize a *per se* rule was fully in accord with the prior rulings of this Court and thus does not justify review.

III. THERE IS NO CONFLICT AMONG THE CIRCUITS

Petitioner asserts that the Court of Appeals' characterization of Hobart's denial as "vertical" rather than "horizontal" is in conflict with *Malley-Duff & Associates v. Crown Insurance Co.*, 734 F.2d 133 (3d Cir.), *cert. denied*, 469 U.S. 1072 (1984) and *Com-Tel, Inc. v. DuKane Corp.*, 669 F.2d 404 (6th Cir. 1982). Pet. 6. The asserted basis for this conflict is that "when [petitioner] proved that a nominally vertical agreement had the purpose and effect of restraining competition on a horizontal level" it "would apparently receive different treatment in other circuits." Pet. 6-7.

This asserted "conflict" completely ignores the conclusion of the Court of Appeals that no competition involving either Hobart products or restaurant equipment generally was in any way affected by the denial of a distributorship to Westman. Thus, as best, Petitioner's claim of "conflict" is merely a factual issue, as we have shown above.

Moreover, both *Malley-Duff* and *Com-Tel* were based upon a factual record that showed collective refusals to deal negotiated between a manufacturer and multiple dealers evidencing the type of "classic boycott" found by this Court to exist in *United States v. General Motors Corp.*, 384 U.S. 127 (1966).[5] Neither case involved a distributorship denial by a single manufacturer at the instance of a

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5. *See Dunn v. Mavis, Inc. v. Nu-Car Driveaway, Inc.*, 691 F.2d 241, 244 (6th Cir. 1982) in which the Sixth Circuit limited its prior opinion in *Com-Tel* to "collective refusals to deal negotiated between a manufacturer and multiple dealers"; and the Third Circuit's insistence in *Malley-Duff* that its opinion was limited to a "classic boycott" as exemplified in *United States v. General Motors Corp.* *Malley-Duff*, 734 F.2d at 142.

single competitor without any allegation of price maintenance, as is present here. Indeed, the District Court's holding below is the only opinion decided subsequent to *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977) that specifically held a *per se* violation on such facts.[6]

Westman's asserted "conflict" also ignores the fact that *Malley-Duff* and *Com-Tel* were decided prior to this Court's decisions in *Monsanto, Indiana* and *Northwest Stationers*. Insofar as dicta in *Malley-Duff* and *Com-Tel* may suggest the existence of a new *per se* rule merely requiring proof of a manufacturer's termination of a dealer at the direction of a single customer without evidence of price fixing or market power, that suggestion has been rejected *a fortiori* by this Court. *See, Monsanto*, 465 U.S. at 761; *Northwest Stationers*, 105 S. Ct. at 2620-22; *Indiana Federation of Dentists*, 106 S. Ct. at 2018.[7]

For all of these reasons, Petitioner's claim of conflict should be rejected and certiorari denied.

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6. All appellate holdings on similar facts since *Continental* have declined to apply a *per se* rule. *See*, e.g., *Beach v. Viking Sewing Machine Co., Inc.*, 784 F.2d 746, 750-52 (6th Cir. 1986); *McCabe's Furniture, Inc. v. La-Z-Boy Chair Co.*, 798 F.2d 323, 329-31 (8th Cir. 1986); *Business Electronics Corp. v. Sharp Electronics*, 780 F.2d 1212, 1215-19 (5th Cir. 1986), *pet. for cert. filed* 54 U.S.L.W. 795, 55 U.S.L.W. 300 (May 21, 1986, June 19, 1986) (Nos. 85-1910, 85-2094); *Reborn Enterprises, Inc. v. Fine Child, Inc.*, 590 F. Supp. 1423, 1441 (S.D.N.Y. 1984), *aff'd per curiam* 754 F.2d 1072 (2d Cir. 1985); *Cascade Cabinet Co. v. Western Cabinet & Millwork, Inc.*, 710 F.2d 1366, 1370-73 (9th Cir. 1983); *Construction Aggregate Transport, Inc. v. Florida Rock Industries, Inc.*, 710 F.2d 752, 771-82 (11th Cir. 1983); *Products Liability Insurance Agency, Inc. v. Crum & Forster Insurance Co.*, 682 F.2d 660, 663-65 (7th Cir. 1982); *Oreck v. Whirlpool Corp.*, 579 F.2d 126 (2d Cir.), *cert. denied*, 439 U.S. 946 (1978).

7. *Indiana* and *Northwest* involved more than simply the conduct of a single manufacturer and a single customer. Those cases both were concerned with a classic boycott involving truly horizontal conduct by multiple parties at the same level of dis-

(Continued on following page)

IV. PETITIONER'S SECOND AND THIRD QUESTIONS ARE NOT PROPER SUBJECTS FOR REVIEW

A. The Court of Appeals Did Not Establish a Rule of Per Se Legality

Petitioner's second asserted ground for review—that the Court of Appeals has established a rule of *per se* legality for non-price vertical restraints—misreads the Court of Appeals' opinion and, again, asks this Court to review the record to see if it disagrees with the Court of Appeals' analysis.

The Court of Appeals did not establish a rule of *per se* legality. On the contrary, the Appellate Court thoroughly analyzed the findings of the District Court and the record to assess whether the denial of the distributorship had any adverse effect upon consumers, as opposed to competitors, in either the interbrand market for restaurant equipment and supplies or the intrabrand market for Hobart products.[8] Applying the rule of reason, the Court of Appeals found no evidence of any adverse effect upon competition that

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Footnote continued—

tribution. Still, this Court required that a *per se* boycott claim must include a showing of market power or exclusive access to an element essential to effective competition so that the economic impact of the refusal to deal is immediately obvious. *Indiana*, 106 S. Ct. at 2621. If such a showing is required for a true group boycott claim, it must *a fortiori* be also required for Petitioner's new "horizontal impact" *per se* rule. Since the Court of Appeals' analysis of the evidence precludes any such showing here, there can be no conflict with the Court of Appeals' opinion to merit this Court's review.

8. Westman's misleading assertion that it was punished for attempting to offer consumers a wider choice of products and lower prices (Pet. 15-16) is simply wrong. The portion of the District Court's judgment, cited by Westman as support for this statement (Pet. 16, n.46) and the record, contain absolutely no support for any such assertion.

would injure consumers, not just competitors, and thus granted judgment to Hobart.

This approach does not constitute a "rule of *per se* legality" and is fully consistent with this Court's opinions. *NCAA v. Board of Regents of University of Oklahoma*, 468 U.S. 85, 100 (1984); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 342-343 (1979); *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977). Westman's "*per se* legality" argument simply reflects a disagreement with the Tenth Circuit's conclusions following analysis of the record and does not constitute a proper subject of review.

B. The Court of Appeals Properly Determined the Market in Which Westman Competed

Petitioner's third ground for review—that the Court improperly defined the relevant product market—again misconstrues the holding of the Court of Appeals and asks this Court only to review the Court of Appeals' analysis of the record.

Contrary to Petitioner's representations (Pet. 18), the Court of Appeals did focus on the market in which Westman competed—the market for restaurant equipment sold by dealers such as Westman, whether or not they employed a "one-stop shopping" method of distribution.

The Court of Appeals found that the District Court's error in constructing a "one-stop shopping market" was in focusing upon a method of competition rather than the variety of choices available to consumers of restaurant equipment—"The fact that a distributor is able to satisfy all of a customer's needs at one location does not mean that it is free from competition from other types of distributors." Pet. App. 7a.

Finding no evidence that restaurant equipment produced by other manufacturers was not interchangeable with Hobart products, and no evidence that the cross-elasticity of demand between Hobart products and other competing products was inelastic, the Court held as a matter of law that "the relevant product market at a minimum consisted of the products generally sold by restaurant equipment dealers, whether or not those dealers carried a wide enough range of products and brands to be classified as 'one-stop shopping' distributors." Pet App. 8a-9a.

This holding is entirely consistent with this Court's opinion in *Brown Shoe Company v. United States*, 370 U.S. 294 (1962).

Petitioner's contention that the Court of Appeals "ignored the legal context of this case—[that] Westman was excluded from the one-stop shopping market when the indispensable Hobart line was cut off" (Pet. 19) is simply not so. The Court of Appeals not only considered this contention, it rejected it. Its evaluation of the record has no impact outside of the limits of this case.

CONCLUSION

For all of the reasons set forth above, the Writ should be denied.

Respectfully submitted,

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APPENDIX A

STATEMENT REQUIRED BY RULE 28.1

The following are parents, subsidiaries or affiliates of Respondent:

Dart & Kraft, Inc.

Kraft, Inc. (Delaware)

- Alimentos Kraft de Venezuela, C.A. (Venezuela)
  - Inversiones Kraft, C.A. (Venezuela)
- Butland Industries Limited (New Zealand) (49%)
  - Roskill Cartage and Storage Limited (New Zealand)
- Churny Company, Inc. (Delaware)
- Dowdall, O'Mahoney and Company Limited (Ireland)
- Frusen Gladje, Ltd. (Delaware)
- Kraft Europe, R & D, Inc. (Delaware)
- Kraft (Europe) S.A. (Switzerland)
- Kraft Foods de Mexico, S.A. de C.V. (Mexico)
- Kraft Foods Inc. (Philippines)
- Kraft Foods Limited (Ireland)
- Kraft Foods S.A. (Panama)
- Kraft G.m.b.H. (West Germany)
- Kraft Holdings Limited (Australia)
  - Fred Walker & Company Pty. Ltd. (Australia)
  - Kraft Foods Limited (Australia)
  - Maxam Foods Products Pty. Ltd. (Australia)
  - Sungold Dairies Proprietary Limited (Australia) (50%)
- Kraft-Leonesas, S.A. (Spain)
- Kraft Limited-Kraft Limitee (Canada)
  - Darifarm Foods Inc./Aliments Darifarm Inc. (Canada)

Aliments D.F.L. Inc. (Canada)
File Superpila S.p.A. (Italy)
Superpila Industriale S.p.A. (Italy)
Ingleside Cheese Inc. (Canada)
Ridg's Finer Foods, Inc. (Canada)
Kraft S.p.A. (Italy)
Commerciale Osella S.p.A. (Italy) (51%)
Diesse Italia S.p.A.
Invernizzi S.p.A. (Italy) (76%)
S.p.A. Superpila (Italy) (97.6%)
N B P Marketing, Inc. (Delaware)
N.V. Kraftco S.A. (Belgium)
Phenix Management Corporation (Delaware)
Ridg's Finer Foods, Inc. (Delaware)
Velv Advertising, Incorporated (Connecticut)
Westman Commission Company (Colorado)
Dart Industries Inc. (Delaware)
Anova Electronics Inc. (Delaware)
Dart Argentina S.A. (Argentina)
Tupperware S.A. (Argentina)
Dart de Venezuela, C.A. (Venezuela)
Dart do Brasil Industria c Comercio Ltda. (Brazil)
Adota Artigos Domesticos Ltda. (Brazil)
Dart Europe S.A. (France)
Dart Hellas S.A.I. (Greece)
Dart Iberica S.A. (Spain)
Dart Industries Belgium S.A. (Belgium)
Dart Industries Deutschland G.m.b.H. (West Germany)
Daimon-Duracell Batterien G.m.b.H. (West Germany)
Daimon-Duracell G.m.b.H. (West Germany)
Dart Industries G.m.b.H. (Austria)
Dart Industries Hong Kong Limited (Hong Kong)

Dart Industries Mortgage Company (Delaware)
Dart Nederland Properties B.V. (Netherlands)
Dart Industries Nederland B.V. (Netherlands)
Insulpak N.V. (Netherlands)
Dart Industries (New Zealand) Limited (New Zealand)
Dart Industries (Proprietary) Limited (South Africa)
Dart Italia S.p.A. (Italy)
Dart (Philippines), Inc. (Philippines)
Dart Products National Limited (Canada)
Dart, S.A. de C.V. (Mexico)
Dart (Suisse) S.A. (Switzerland)
Dartco Manufacturing Inc. (Delaware)
Dartind Australia Pty. Ltd. (Australia)
Dartluso-Industria Lusitana de Artigos Domesticos, Lda. (Portugal)
Duracell Inc. (Delaware)
Duracell International Inc. (Delaware)
Daimon-Duracell (Pilhas) Limitada (Portugal)
Daimon (Hellas) S.A. (Greece)
Duracell Argentina S.A. (Argentina)
Duracell Australia Pty. Limited (Australia)
N.V. Duracell Batteries S.A. (Belgium)
S.A. Duracell Benelux N.V. (Belgium)
Duracell Battery Japan, Ltd. (Japan)
Duracell Caribbean, Inc. (Puerto Rico)
Duracell Chile Ltda. (Chile)
Duracell-Daimon Norge A/S (Norway)
Duracell-Daimon Svenska A/B (Sweden)

Duracell do Brasil Industria c Comercio Ltda. (Brazil)
Duracell Holdings BV (Netherlands)
Duracell A.G. (Switzerland)
Duracell Nederland BV (Netherlands)
Duracell Inc. (Canada)
Duracell New Zealand Limited (New Zealand)
Duracell, S.A. de C.V. (Mexico)
Duracell (S.E.A.) Pte. Ltd. (Singapore)
Mallory Overseas, Inc. (Delaware)
Sanyo Duracell Co., Ltd. (Japan) (50%)
Dart Industries Canada Limited - Industrias Dart du Canada Limitee (Canada)
Japan Tupperware Co., Ltd. (Japan)
Precor Incorporated (Delaware)
Productos de Atencion de Salud de Mexico, S.A. de C.V. (Mexico)
Rexall Realty Corporation (Delaware)
Tupperware Australia Pty. Ltd. (Australia)
Tupperware Chile Sociedad Comercial Limitada (Chile)
Tupperware Iberica S.A. (Spain)
Tupperware Pacific Company Limited (Hong Kong)
Tupperware (Portugal) Artigos Domesticos, Lda. (Portugal)
Tupperware Singapore Pte. Ltd. (Singapore)
Tupperware (Thailand) Limited (Thailand)
Tupperware Uruguay S.A. (Uruguay)
911 Hall Corporation (Delaware)

Hobart Corporation (Delaware)
The Stero Company (Delaware)

Hobart International Holdings, Inc. (Delaware)
Hobart Canada Inc. (Canada)
Hobart Maschinen G.m.b.H. (West Germany)
Hobart Sales and Service, Inc. (Ohio)

DKI Commercial Equipment Holdings, Inc. (Delaware)
Compagnie Hobart S.A. Belge (Belgium)
Compagnie Hobart, S.A. (France) (99.875%)
Hobart A.G. (Switzerland)
Hobart B.V. (Holland)
Hobart (Swiss) A.G. (Switzerland)

Celestial Seasonings, Inc. (Delaware)
(Shareholders are various U.S. subsidiaries of the Registrant)
Celestial Enterprises, Inc. (Delaware)
Celestial Manufacturing, Inc. (Delaware)
Celestial Transport, Inc. (Colorado)
Dart & Kraft Capital S.A. (Switzerland)
Dart & Kraft U.K. Investments Limited (Delaware)
Dart & Kraft Holdings Limited (United Kingdom)
Dart & Kraft Financial Services Ltd. (United Kingdom)
Dart Industries Limited (United Kingdom)
Duracell Batteries Limited (United Kingdom)
Duracell South Africa (Proprietary) Limited (South Africa)
The Hobart Manufacturing Company, Limited (United Kingdom)

Hobart Equipment Leasing Limited (United Kingdom)
Kraft Foods Limited (United Kingdom)
Dart & Kraft Insurance Company Limited (United Kingdom)

Cook Insurance Co., Ltd. (Bermuda)

Dart & Kraft Corp. (Delaware)

D & K Export Inc. (U.S. Virgin Islands)

Dart & Kraft Holding A/S (Denmark) (Shareholders are various subsidiaries of the Registrant)
Duracell-Daimon A/S (Denmark)
Kraft Foods A/S (Denmark)
Kraft Foods Invest A/S (Denmark)
Rexall Scandinavia A/S (Denmark)

Dart & Kraft Finance N.V. (Netherlands Antilles)

Dart & Kraft Financial Corporation (Delaware)
Coastal Vehicle Management Inc. (Delaware)
DKF Leasing, Inc. (Delaware)
Leaseway Fleet Management Corp. (Ohio)

Dart Resorts Inc. (Delaware)
Dart Properties Inc. (California)
Dart Resort Services Company (California)
Fivesome, Inc. (California)
Lakeworld Properties (California)
Kir-Steve Corp. (California)
Tahoe-Donner, Inc. (California)
Tahoe-Donner Sales, Inc. (California)

Phenix-Georgetown. Inc. (Delaware)

Phenix Leasing Corporation (Delaware)